

surveyed the case law and opined that (i) courts reviewing FLSA settlements must evaluate them for fairness, considering a variety of factors (including probability of success on the merits, range of possible recovery, opinions of counsel, etc.); (ii) confidentiality clauses in FLSA settlements should not be approved; (iii) broad pervasive release provisions in FLSA settlements generally should not be approved; and (iv) attorney's fees in FLSA settlements must be analyzed for reasonableness using a traditional lodestar analysis.²

If the Court were to apply the *Smith* rule here, the parties' Motion for Approval of Settlement would appear to fall short under each of the four principles identified *supra*. That said, the parties have not been afforded a reasonable opportunity to address the *Smith* approach and either (i) present argument and authorities explaining why it should not be followed here (because, for example, this case is distinguishable, or the parties believe the law is otherwise); or (ii) supplement their Motion in a manner that conforms with the requirements of *Smith*. Accordingly, the parties are **ordered**, on or before **February 1, 2013**, to **show cause** why their Motion for Approval of Settlement should not be denied under the *Smith v. Community Loans* rationale and/or to amend their Motion to bring it into conformity with that opinion.³

DONE and ORDERED this 17th day of January, 2013.

s/ WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE

² As to the fourth prong of the *Smith* ruling, the Court recognizes a strand of the case law opining that review of reasonableness of attorney's fees paid in an FLSA settlement is unnecessary where a proposed settlement, *inter alia*, "represents that the plaintiff's attorneys' fee was agreed upon separately and without regard for the amount paid to the plaintiff," such that the matter of attorney's fees was "addressed independently and seriatim" to that of the plaintiff's recovery. *Wing v. Plann B Corp.*, 2012 WL 4746258, *3 (M.D. Fla. Sept. 17, 2012) (citations omitted).

³ To be clear, the Court is not mandating that the parties choose all or nothing. There may be aspects of the *Smith* rule that they wish to contest, and other aspects of *Smith* that they concede should govern review of their settlement. Such a mixed approach is perfectly acceptable, so long as the parties address – one way or the other – each of the four critical aspects of *Smith* identified herein.